

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 2149 of 2005**

With

CRIMINAL APPEAL No. 2455 of 2005**For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE****HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

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PRAKASH RAMJIBHAI MARWADI - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :**Criminal Appeal No. 2149 of 2005**

MR RAJESH K SHAH for Appellant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

Criminal Appeal No. 2455 of 2005

MR YN LAKHANI with MR ASHISH DAGLI for Appellant:1

MR KT DAVE, APP, for Opponent : 1

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE**and****HONOURABLE MR.JUSTICE KS JHAVERI****Date : 11/04/2007**

ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)**

1. These two appeals have been filed against a common judgment dated 28th September, 2005 delivered by the Addl. Sessions Judge, Court No. 7, Ahmedabad City, in Sessions Case No. 4 of 2005 and Sessions Case No. 78 of 2005. By virtue of the impugned judgment and order, the accused in Sessions Case No. 4 of 2005, Prakash Ramjibhai Marwadi, has been held guilty of the offences punishable under sections 365, 342 and 376 read with sec. 114 of the Indian Penal Code (for short 'IPC') and has been sentenced to undergo Rigorous Imprisonment for 5 years for the offence under sec. 365 of IPC and a fine of Rs. 3,000/-, in default to undergo Simple Imprisonment for 6 months, for the offence under sec. 342, he has been sentenced to undergo simple imprisonment for one year and a fine of Rs. 1,000/-, in default simple imprisonment for 3 months, for abetment of offence under sec. 376 of IPC, to undergo rigorous imprisonment for 5 years and a fine of Rs. 10,000/- and in default, simple imprisonment for one year. It has been also ordered that the time spent in judicial custody be given as a set off. All substantive sentences are ordered to run concurrently.

2. So far as accused in Sessions Case No. 78 of 2005, Ramesh @ Vinod @ D.K Rodji @ Chaudhry @ Patel Shankarji @ Rajubhai Chaudhry-Patel (Kalal) is concerned, he has been held guilty of offences under

sections 328 and 376 of the IPC and has been sentenced to rigorous imprisonment for 5 years and a fine of Rs. 5,000/-, in default simple imprisonment for one year for the offence under sec. 328, whereas for the offence under sec. 376 of the IPC, he has been sentenced to undergo rigorous imprisonment for 10 years and a fine of Rs. 25,000/-, in default to undergo further rigorous imprisonment for one year. Substantive sentences are are ordered to run concurrently.

3. As observed by the Hon'ble Supreme Court in the case of **State of Karnataka v. Puttaraja**, AIR 2003 SCW 6429, so as to see that name of the victim is not revealed, the affected party has been referred to as "the victim" throughout the judgment.

4. Case of the prosecution, in both the cases, in a nutshell, was as under:

4.1. Though different versions have been given by the victim at different points of time, if one has to state in a nutshell, the victim's story goes as under:

4.2. The victim, a native of Haryana, wanted to go to Jammu from her village Oninda and, therefore, she went to Delhi. At Delhi, she was guided by someone and she boarded a train as per the guidance but in fact that train was going to Ahmedabad and, therefore, she landed at Ahmedabad. While alighting from the train at Ahmedabad, she did not know that she was in Ahmedabad and she believed the place to be Jammu. She

was guided by a person named Yogesh, who took her to a hotel, where she stayed for two days. Thereafter, she changed the hotel and went to another one. She subsequently left the hotel with an intention to go back to her hometown and while she was on her way to the railway station, she was abducted by two persons, named, Prakash and Puja. Prakash is the accused in Sessions Case No. 4/2005, who has preferred Criminal Appeal No. 2149 of 2005. Another person, who participated in the offence of abduction, namely, Puja, is still absconding.

4.3. According to the victim, she was taken to a flat, named, Anushruti Flats by the above-named two abductors. She was kept in that flat for about 3 days and on the third night she was raped by two persons, named, Ramesh @ D.K. @ Vinod and another person, named, Rana. Rana is absconding and D.K., who was the accused in Sessions Case No. 78/2005, has filed Criminal Appeal No. 2455 of 2005.

4.4. After the victim was raped, she was locked in the flat and when she got up on the next day, so as to escape from the flat which was perhaps on the second floor, she tied her 'dupatta' and a bed-sheet together to a grill of a window and she got down from the flat. When she got down, she saw two policemen in the vicinity and upon inquiring with them about the nearest police station, she was guided to Sola High Court Police Station, where she narrated her story. The concerned police officer of Sola High Court Police Station took down the complaint and told her to go to

Ellisbridge Police Station as the first offence in the chain had taken place within the jurisdiction of Ellisbridge Police Station because she was abducted from the area, which was within the jurisdiction of Ellisbridge Police Station.

4.5. The victim was thereafter taken to Ellisbridge Police Station and there she again narrated the entire story and an FIR was filed. Subsequently, she was referred to the Medical Officer of Civil Hospital where she was medically examined. Upon examination of her body, it was found that she had sexual intercourse earlier.

5. We have deliberately not given details with regard to time, date and other particulars about the above story narrated by the victim because the victim has changed her version from time to time. If one looks at the F.I.R. and the deposition which she made before the Sessions Court, one can find that at different points of time she has narrated different versions. In view of the said fact, we have only stated the grievance with which the victim had gone to the police station.

6. Now, looking to the FIR, which she filed at Sola High Court Police Station and later at the Ellisbridge Police Station, her version in somewhat detail, is as under:

6.1 On 13.2.2003 at 8.30 p.m., at Sola High Court

Police Station, an FIR was recorded. As per the FIR given by the victim, she was staying with her father Subesingh in her village Oninda. While giving details about her family, she stated that her father had married twice. Upon death of his first wife, he married Shweta. Out of the first marriage of her father, he had a son, named, Yogendra, who was working in BSF and living in Delhi Fauji Camp. Thus, Yogendra was her step-brother and she further stated that she had one younger brother and younger sister.

6.2 The victim wanted to come to Ahmedabad as she had to appear at an interview on 05.02.2003 for the post of a typist. Intimation with regard to the interview was received by her through her grandfather. She left her village on 02.05.2003 with the call letter and went alone to Delhi and there she met her step-brother Yogendra and told him that she wanted to go to Ahmedabad to appear at the interview. Thereupon, her step-brother informed her that his friend, Suresh, was also to go to Ahmedabad for some work and, therefore, she could accompany Suresh. Then she came to Ahmedabad with Suresh on 4.2.2003 around 11 a.m. At Ahmedabad Suresh took her to Hotel Raj Palace and informed her that she should wait there for sometime as he had to go for some work. Meanwhile, she occupied Room No. 203 in the said hotel. Suresh did not come back thereafter and, therefore, she did not go to appear at the interview. Though Suresh had not come, the victim stated that a telephone call from Suresh was received, and he asked her to appear at the interview. She further stated that as she found

the hotel charges to be quite high and, therefore, she asked the manager of the hotel to suggest name of another economical hotel, and, therefore, the manager of the hotel sent one of the employees of the hotel along with the victim to another hotel, where tariff of the room was Rs. 300 per day and she occupied Room No. 204 of the second hotel. She did not remember name of the second hotel, where she stayed. At night Suresh telephoned her and told her to wait for two days so that upon finishing his work he would take her back to Delhi.

6.3 On that day, the victim met a girl, named, Puja, who inquired about her and the purpose for which she had come to Ahmedabad. At the time when she was talking to Puja, someone came there and upon inquiry Puja informed her that the said person was her brother and his name was Prakash. They inquired whether she was alone and upon knowing that she was alone in Ahmedabad and wanted to go to Delhi, they told her to accompany them as they too were to go to Delhi. When she was ready to go with them, the manager of the hotel Suresh Yadav told her that she should not go as she had already paid the room charges. Thereupon Prakash and Puja left the hotel and Suresh Yadav, Manager of the hotel, told her that those two persons (Prakash and Puja) were not good persons and, therefore, she should not go with them.

6.4 Thereupon she stayed back in the hotel and on the next day an employee of the hotel came to her room and instructed her to vacate the room immediately.

Thereupon she told the said employee that she had to wait for Suresh, but without listening as to what she said, she was asked to vacate the room. After leaving the hotel, when she was waiting for an auto rickshaw for going to railway station, an auto rickshaw came near her, wherein Prakash and Puja were sitting. Puja called her and asked her whether she wanted to go to Delhi as they too were going to Delhi. When she went near Puja, Puja pulled her hand and before she could react, her another hand was pulled by Prakash and as a result thereof she was dragged into the auto rickshaw. Puja had a handkerchief in her hand with which she covered the victim's mouth and thereupon she lost her consciousness.

6.5 When she regained her senses, she was in a flat in some building and at that time Prakash and Puja were with her and Puja told her that she (the victim) had to stay there. Thereafter she was locked in a room and Prakash and Puja left the flat. The victim also stated that thereafter Prakash and Puja used to visit the place either during the day or at night and they also used to manage for her food and while leaving, they used to lock her in a room. Thereafter, on 12.2.2003 in the evening, Prakash and Puja came with two other persons. One of them was introduced by Prakash to her as "D.K" and another was introduced as Rana. After introducing those two persons, after sometime Prakash and Puja left the place.

6.6 Thereafter, around 11.30 p.m., D.K. and Rana consumed liquor and they also forcefully poured

liquor in her mouth. Thereafter, they removed her clothes and first of all D.K. raped her and then Rana also raped her. She thereupon fell unconscious and she did not know as to when they left the place.

6.7 On the next day, i.e., on 13.2.2003 around 3 p.m, she gained her consciousness and thereupon she put on her clothes. When she made an effort to open the door, she could not open it as it was locked from outside. Therefore, she tried to find a way to run away from the flat. She could find a bed-sheet and by tying her dupatta to the bed-sheet and tying the same with the grill of a window, she got down from the flat. Upon getting down from the flat, she reached the main road and thereafter she came to know that name of the building, where she was taken and locked, was 'Anushruti Tower' and on the adjoining road she saw a board of Hotel Signor. She stated that when D.K. came, he gave his visiting card to her and in the visiting card it was stated 'D.K. Chaudhry' and his address was Gurukrupa Society, Sola Road, Ahmedabad. Similarly, Rana also gave his card to her, which stated that he was G.S. Rana residing at 19/75, S.D.P. Road, Andheri(W), Mumbai-53. The two visiting cards, in addition to card of Hotel Raj Palace, were given by her to the police authority. Thus, she filed the FIR to the above effect around 8.30 p.m. on 13.2.2003.

7. The aforesaid version was the first version of her story narrated before the PSI, Sola High Court Police Station and recorded by Niranjانبhai N. Dave, PSI (Ex. 35).

7.1 As the first offence relating to the victim's abduction had not taken place within the jurisdiction of Sola High Court Police Station, the Police Sub-Inspector did not register the FIR though he recorded the F.I.R. and asked the victim to go to Ellisbridge Police Station. The PSI of Sola High Court Police Station addressed a letter to the in-charge police officer of Ellisbridge Police Station stating that the offence had been committed near Paldi Cross Roads and, therefore, though the offence had been recorded at Sola High Court Police Station as C.R No. 00/03, the papers were being forwarded to Ellisbridge Police Station on 14.2.2003. At Ellisbridge Police Station, the offence had been registered at I-CR No. 138/03.

8. Thus, from the first version given by the victim before the police authorities, it can be inferred that she had voluntarily come to Ahmedabad for appearing at an interview on 5.2.2003 and she had been abducted by Prakash and Puja and she was taken to a building named Anushruti Tower, where she was detained from 7.2.2003 to 13.2.2003, where she had been raped by two persons, and upon getting a chance, she had escaped from the building and had approached Sola High Court Police Station and thereafter Ellisbridge Police Station, where an FIR was registered.

9. When the victim was examined before the Sessions Court on 9.2.2004 as Prosecution Witness No. 5 (Ex. 21), she gave an altogether different version, which

is as under:

10. According to her, from her village Oninda she wanted to go to Jammu and for that purpose she first went to Delhi. At Delhi she asked a stranger named Yogendra as to which train was going to Jammu and Yogendra guided her and accordingly she was made to sit in a train. Yogendra left thereafter. The train, which was boarded by her, brought her to Ahmedabad instead of Jammu and when she got down at Ahmedabad Railway Station, she met a person named Yogesh.

10.1 Yogesh took her to a hotel, where she stayed for two days, but she did not remember the name of the hotel. Thereafter, an employee of the said hotel took her to another hotel. Name of that another hotel was also not remembered by her. She was shown a copy of the hotel register, which was signed by her and she identified her signature, which was on page 19 of the hotel register (Exh. 42). In the second hotel she stayed for 3 days and in that hotel she met Prakash and Puja. (Ex. 43). She identified Prakash, who was in the court. When she left the hotel for going to Delhi, on the way she was abducted by Prakash and Puja and thereafter she was taken to a flat and in the flat she was made to stay for 3-4 days. On the next day, two persons, named, Rana and D.K., had come there and had offered her papad and she was also given liquor. Thereafter those two persons had raped her. She identified the person named D.K., who was in the court.

10.2 According to her, she was locked up in the flat and those two persons, Prakash and Puja, left the place. On the next day morning, she tied a bed-sheet of the hotel with her dupatta and both were tied to a pipe of the hotel and through a window she got down. [Though she was not in a hotel at the relevant time, she has referred to the place as a hotel and 'bed-sheet of the hotel']. Thereafter she saw some policemen and she narrated her story to those policemen and, thereafter, she was taken to a police station. At the police station whatever she stated was jotted down and she put her initial. She signed the document, which was written by the police. The police had informed her that whatever she had stated was recorded in Gujarati. Whatever was recorded in Gujarati was translated into Hindi and was read over to her in the court.

10.3 Here the victim has changed her version and has stated that it was not true that she had to appear at an interview at Ahmedabad and, therefore, she wanted to come to Ahmedabad. She also denied that her step-brother Yogendra was contacted by her and Suresh was introduced to her by Yogendra. Thus, she changed her version by stating that by mistake she had come to Ahmedabad and the entire story with regard to coming to Ahmedabad to appear at the interview had been denied by her. She stated that there was some dispute with regard to her friend at her residence in her village and therefore she had left her residence and came to Ahmedabad. She identified her clothes, which were recovered from Anushruti Flats from where she had

escaped.

10.4 In the cross-examination she stated that she did not know as to when she came to Ahmedabad Railway Station and she was all alone when she came to Ahmedabad Railway Station. She even did not know that she had come to Ahmedabad. She had never gone to Jammu or Ahmedabad earlier and therefore she believed that she was in Jammu, whereas in fact she was in Ahmedabad. The person in the hotel had informed her that she was in Ahmedabad and not in Jammu. So as to clarify, she stated that it was for the first time she had left her house from her village and therefore she was not aware whether she was in Jammu or Ahmedabad. She thereafter stated in her cross-examination that she was taken to a hotel by Yogesh, who met her at the platform on Ahmedabad Railway Station. She did not know Yogesh, but Yogesh met her and inquired as to where she wanted to go. Upon asking as to where she wanted to go, she told Yogesh that she wanted to go to Jammu. Yogesh also didn't inform her that she was in Ahmedabad. Thereafter with some difficulty she came to a hotel. Yogesh made some inquiry at the reception counter of the hotel where they had come, and she was straightway taken to a room in the hotel. First of all, she stated that she had not signed the hotel register, but subsequently she changed her version and said that she had signed the hotel register. She had not paid any amount by way of deposit to the person at the reception counter of the hotel.

10.5 Only when she asked an employee of the hotel, she came to know that she was in Ahmedabad and thereupon she told that she wanted to go to Jammu. She also told the owner of the hotel that she wanted to go to Jammu. As there was a telephone in her room, she made an effort to contact her father, but she could not. She paid Rs. 500 as hotel charges while leaving the hotel and she was also given a receipt. She left the hotel because she wanted to go to Jammu. While leaving the hotel, she was told that there was no train going to Jammu at that time and, therefore, she went to another hotel. She didn't inquire anything about trains going to Jammu and she didn't remember as to when she had been to another hotel. In another hotel she stayed for two days and even at that time she did not make any inquiry with regard to trains going to Jammu.

10.6 Thereafter she stated with regard to the place where she was taken and from where she managed to escape through the window. Upon getting down through the window by tying her dupatta and a bed-sheet to the grill of a window, she saw some policemen and with their guidance she went to a police station, where the details given by her were noted. Thereafter she was taken to another police station, but she did not know the time taken for going to another police station and the time she reached the second police station but she had remembered that she went to another police station during the day time. She was taken to a hospital from the second police station and she was medically examined in the hospital. In the police station she

stayed for a night and at that time her uncle had come. The police also made inquiries with her uncle.

10.7 Once again in the cross-examination she changed her version and said that it was not true that she informed the police that when she got down from the train she had met Yogesh. She also did not state anything to police with regard to Suresh and that she was asked to vacate the room in the second hotel. She also denied that she told the police that she was staying with her grandfather and grandmother at Alwar and she was studying in first year science (Hindi medium) at Sanjay College, Alwar. She also denied that she had stated anything with regard to her step-brother Yogendra. She also denied that she had applied for the post of a typist and also denied the details with regard to the interview call. Similarly, she also denied that Yogendra, her step-brother, had told her to go to Ahmedabad with his friend Suresh. She further denied that she and Suresh had gone to Hotel Raj Palace and as Suresh did not come, she didn't appear at the interview. She further denied that room charges of Hotel Raj Palace were quite high and therefore she had requested the manager of the said hotel to suggest name of another cheaper hotel. She also denied that she had gone to Hotel 'Rest N Ride' at Paldi, where tariff was Rs. 300 per day and she had occupied Room No. 204 therein. She further denied that a girl named Puja had come to her room and there her brother named Prakash had also come. She also denied that Puja and Prakash had offered her to come to Delhi with them and that manager of the hotel,

Suresh Yadav, had told her that she should not go with with Prakash and Puja as they were not good persons. She also denied that on 7.2.2003 she was asked to vacate the room at Hotel Rest N Ride.

11. Thus, the entire version with regard to coming to Ahmedabad for appearing at the interview after meeting her step-brother Yogendra with Suresh at Delhi and going to Hotel Raj Palace and then to Hotel Rest N Ride and meeting Puja and Prakash at Hotel Rest N Ride has been denied by her.

12. Once again, the victim gave a different version and stated in her deposition that she had stated before the police that a person named Gajraj Balwantsingh Yadav, who was studying in senior secondary school at Adelimandi, was harassing and teasing her and therefore she had given a written intimation (complaint) of the said fact to the police and her family members were also informed about the said matter. Because of the said fact, there were some disputes with the above mentioned Gajraj. She further stated that she had told the police that she was afraid of her father because of the dispute which the family had with Gajraj and therefore at 1 a.m. on 02.02.2003, she had put her clothes, camera and certain other things in a shoulder bag and had gone away from her residence on her cycle when her mother as well as brother had gone to their agricultural field for the purpose of irrigating the land. At that time one of her brothers was sleeping. She further stated that she had stated to police that she had left

her cycle at 2 a.m. at the shop of Appubhai, which was near her village, by putting a note on the cycle. She had also told the police that at 4 a.m. a train going to Delhi had come and she had boarded the train and reached Delhi in the morning at 8 a.m. Thereafter she had stated that at the Railway Station there was a person named Yogendra, who was from army and he had inquired as to where she wanted to go. Upon knowing that she wanted to go to Jammu, he had taken her to a camp in Delhi and she was kept in the camp.

12.1 Thus, before the court she gave another version to the effect that because of some problem with Gajraj at her village and due to the disputes which Gajraj and her family had, she left her residence without telling her parents at 1 a.m. on 02.02.2003 and went to Delhi and in the train she met a person named Yogendra, who was serving in armed force, who took her to the army camp in Delhi.

12.2 She further stated before the court in the cross-examination that she had never told the doctor while giving her case history that she had come to Ahmedabad on 2.2.2003 from Kashmir for appearing at an interview with Suresh, a friend of her step-brother Yogendra, and she had stayed at Hotel Raj Palace and thereafter on the same day Suresh had left her.

12.3 She further stated that she never knew Prakash and D.K. and there was test identification parade. She has denied the suggestion that she was not raped and she was not constrained to consume liquor

forcefully. She also denied the suggestion that she had wrongfully involved the accused.

12.4 In the cross-examination she further stated that when she boarded a train from Delhi, the entire bogey was full with passengers. There were some ladies also in the bogey, but she did not talk to anyone. She had taken Rs. 4000 from her residence and she had not taken any amount from Yogendra. Yogendra was in the same train in which she went to Delhi. Thereafter, along with Yogendra she went to BSF camp and stayed outside the camp. They didn't have their food in the BSF camp. She also put her signature at the register kept at the entrance of the BSF camp by signing as Susheela Yadav. She also submitted that she was also signing as Kajol because her name is Kajol, but with love and affection she was also addressed as Susheela. She used to sign in Hindi or English depending on her mood. She was shown as a guest of Yogendra, who had accompanied her in the train. Yogendra never told her that Suresh was going to Jammu (?) and she should go with Suresh. Yogendra had purchased her ticket from Delhi. She did not know English, but knew Hindi. She did not remember whether Yogendra had given the ticket to her at Delhi Railway Station. In train she travelled for one day and one night from Delhi. Ticket checker had not visited and nobody had asked for her ticket. She was in a general compartment. As she had no berth to sleep, she was been sitting all the while. Even while coming out of the railway station, nobody asked her for ticket.

12.5 Thereafter she stated that when she had gone to a temple for 'darshan' when she was in the first hotel, she did not know that she was in Ahmedabad. Even after getting down at the station, though people used to talk around her, she did not know that she was in Ahmedabad. She had some material for her make up. She didn't have anything for cutting or trimming hair. When she left the first hotel, she was having less than Rs. 4,000/- as she had already purchased her food. When, at the second hotel, the amount of room and other charges were demanded by the manager, she did not tell the manager that she was not having money. She had paid full amount for lodging and boarding at the first hotel. She denied that Puja had told her that she was going to Mumbai and she might accompany her if she was inclined to go to Mumbai. She was not shown ticket for going to Mumbai.

12.6 When she left the hotel, she took her luggage and for going to another hotel she did not hire any auto rickshaw but she walked. At that time she didn't inquire about the direction to the railway station. She walked a lot and she didn't have any idea as to how much time she walked. At that time she did not meet anyone named Paresh or Yogesh. She did not even phone anyone so as to call someone to take her.

12.7 She had not met any girl named Isha, but in the flat to which she was taken, there she had met a girl, whose name she didn't remember. That girl was also staying with her and she left the place on the night previous to the night when she was raped. She also

denied that the said girl accompanied her to the police station. She stated that she had no 'walkman' but she had a camera but she did not take any photograph. She admitted that the room in which she was locked had open sliding windows which had only windowpanes and no grill. When she looked through the window so as to know the height, she came to know that she was on the third floor and when she got down through the window from the third floor there was no hut of a watchman. She could see windows of other flats and several persons were staying there. She denied that she was sitting in the gallery. She denied that when she was abducted, Puja was not there. She also denied that Puja had gone to Mumbai on the previous day. She reiterated that Puja had pulled her into the rickshaw and had put a handkerchief on her mouth so it was not possible for her to shout for help. She also denied that while going in the rickshaw, they had taken cold drink. She also denied that she danced with a girl named Isha. She stated that she used to wear pant and shirt and also suit.

12.8 On 17th, along with her uncle she had gone to her residence and thereafter, for the first time, she had come to Ahmedabad. She did not know that her father had given a report with regard to her missing at Oninda. She denied that she had made a false complaint to the effect that she had been raped. She also denied that she was telling lies when she said that Puja had closed her mouth with a handkerchief.

12.9 In pursuance of questions put to her by the

court, she stated that Oninda is a small village having 500 to 600 buildings; there is a school up to Std. V; for further studies one has to go to Adelimandi, which is at a distance of about half an hour from Oninda. She had studied up to Std. IX and then she had gone to Adelimandi for studies. She used to go on cycle along with other friends. Adelimandi is a bigger place. Her father was serving with B.S.F. at different places, but she used to stay with her mother, grandfather and grandmother at Oninda. She had never gone alone at the place where her father was posted. She had never gone with her friends to any other village or for touring. For the first time she had left her house on 2.2.2003 alone. On the subject of Gajraj, she stated that there used to be some problems at her residence and therefore she decided to leave her residence and go to Jammu to meet her father. Her father had gone to Jammu just two days prior to that. She had become unconscious when she was raped and when she gained her consciousness, she had tried to open the door, but the door was locked from outside and therefore she got down through a window, which had a broken windowpane. She had come down without her luggage. Her luggage was given to her later by the police.

13. The aforesaid facts and statements made by the victim clearly denote that the victim has given different stories at different points of time. If one can summarise, the victim has given three different versions. The first version, which was given before the police authorities in her FIR, was that she came

to Ahmedabad to appear at an interview; she met her step-brother Yogendra at Delhi and with his friend Suresh, she came to Ahmedabad on 4.2.2003. She went to Hotel Raj Palace and she was to appear at the interview on 5.2.2003, but as Suresh didn't turn up, she did not appear at the interview and as she was not having sufficient money with her, from Hotel Raj Palace she went to another hotel, name of which she did not remember, where room rate was Rs. 300 per day. In the hotel she met Puja and Prakash. She wanted to go to Delhi and for that purpose she left the hotel; while on her way to the railway station, she was abducted by Prakash and Puja in a rickshaw and was taken to a building, the name of which she didn't remember and there D.K. and Rana came and she was raped by both of them. She thereafter escaped from the building by getting down through the window tying her dupatta and a bed-sheet together with the grill of the window.

13.1 Thereafter in the chief she has stated a different story to the effect that she wanted to go to Jammu from Delhi. She was misguided by someone named Yogendra and she was made to board a train which was going to Ahmedabad. In the train also, she didn't know that the train was going to Ahmedabad. Even after alighting from the train, she did not know that she had come to Ahmedabad and not to Jammu. In Ahmedabad someone named Yogesh met her at the railway station, who helped her to go to a hotel. Yogesh did the needful for making entry in the hotel register, but she put her signature in the hotel register. She

met Prakash and Puja at the hotel and they abducted her. She stated that before committing rape, she was given liquor and 'papad' (a large, round wafer-thin crisp eating material) and she had identified D.K. in the court-room.

13.2 The version given by the victim before medical officer Dr. Parul Ramesh Vaghela, PW No. 4 (Exh. 18) on 14.2.2003 around 6.45 p.m., when she was medically examined by her, was again somewhat different. There, the victim stated that on 2.2.2003, so as to appear at an interview at Ahmedabad, she come to Ahmedabad with Suresh Jadav, a friend of her step-brother Yogendra and she stayed in Hotel Raj Palace. On the same day, Suresh left her and as the hotel was expensive, she went to another hotel, which was recommended by an employee of Hotel Raj Palace. She thus shifted to Hotel Rest N Ride, where a girl named Puja and one Prakash came. Police was after these two persons and therefore they both were driven out of the hotel and thereafter manager of Hotel Rest N Ride, Mr. Suresh Yadav asked her to stay in the same hotel where she stayed up to 7.2.2003. When she had left the hotel, while on her way, she met Prakash and Puja sitting in a rickshaw, and she was abducted from that place and was taken to and kept at Anushruti Flats for 4 days and between the midnight of 12.2.2003 and 13.2.2003, both D.K. and Rana had raped her one after another and she had become unconscious.

13.3 When she was being examined in the hospital in the unit of Dr. Leuva, she gave yet another version.

She stated that Rana and D.K. came to the flat on 02.02.2003. They took wine and dinner and then they forced her to have wine with them, though she had refused. Thereupon, those two persons tied her to a bed and poured 2-3 glasses of wine into her mouth. She fought with them to protect herself, but she was overpowered and ultimately she became unconscious. Thereafter without her consent they had sexual intercourse with her. She gained consciousness on the next day i.e. on 13.2.2003 and she ran away from the flat, reached the Sola High Court Police Station, where she filed a case against Rana, D.K., Prakash and Puja.

13.4 Before the Investigating Officer on 17.2.2003, in her further statement, she stated that she was harassed and teased by Gajraj Balwantsingh, who was a student of senior secondary school at Adelimandi and, therefore, a police complaint was filed and because of that, certain problems arose in her family and therefore she was driven out by her father and she was afraid of the scolding of her father and, therefore, at 1 a.m. on 02.02.2003, after taking her luggage in a shoulder bag, on her cycle, without telling anybody, she left her residence.

13.5 In the cross-examination she admitted that the statements made by her with regard to harassment and teasing by Gajraj were correct and as she was afraid of her father's scolding, at 1 a.m. 02.02.2003, after taking her shoulder bag and some luggage, she left her house on her cycle. She left her place at 4 a.m.

by boarding a train going to Delhi and reached Delhi around 8 a.m. on 03.02.2003. She also admitted that a person named Yogendra met her in the train with whom she went to Delhi to his camp. [Here she does not say that Yogendra, whom she met in the train, was her step-brother - possibly she is referring to another Yogendra].

14. From the different versions given by the victim, it becomes extremely difficult to know what is the true story.

14.1 If one looks at the behaviour of the victim, that also appears to be confusing and fishy because, according to the version given by her, she was abducted by Prakash and Puja and was taken to a flat. She was kept there for 3 days, where there was another girl also. According to her, she was locked in a room and D.K. and Rana came there and she was raped. It is difficult to believe that a girl of 17-18 years was kept in wrongful confinement in a residential area, in a room having broken windowpane from where other flats of the adjoining buildings and other people can be very well seen.

14.2 The versions of the victim also creates a doubt because the manner in which she escaped on the 4th day, she could have probably done the same thing on the first day. She has not given proper details about the person, who was with her in the flat. Again, with regard to the place where she was wrongfully confined, she has given different versions. She has stated that

she was on the 3rd floor and with the help of her dupatta and the 'hotel bed-sheet' she got down through the window by tying the bed-sheet-dupatta together with the grill of the window. It appears that it would be very difficult for someone to get down with the help of one bed-sheet and dupatta from the 3rd floor of a building because, normally, length of a bed-sheet would be around 2¼ mtrs. and that of dupatta would be about 2½ mtrs. In any case, with help of a dupatta and a bed-sheet, a person cannot descend from the 3rd floor because for the purpose of tying with the grill and for tying knot with the dupatta and bed-sheet, some portion of both the clothes would be used and thereby effective length of dupatta and bed-sheet would be substantially reduced and that would not make it possible for anyone, especially for a girl, to get down through the window from the third floor.

14.3 With regard to the flat in which she was wrongfully confined, from the panchnama it appears that the number of the flat was 102. Possibly, the flat must be on the first floor because even one of the panch witnesses has said that the room was on the first floor. Another panch witness has said that the room was on the 2nd floor and the victim has said that the flat was on the 3rd floor. So far as the versions given by the panch witnesses are concerned, one can understand that there may be some bona fide misunderstanding or mistake because very often in Gujarat, the ground floor is regarded as the first floor and the floor which is above the ground floor is treated as 2nd floor. Elsewhere, the floor which is

above the ground floor is treated as the first floor. So, there can be a kind of misinterpretation on the part of the panch witnesses, but the version given by the victim that she was on the 3rd floor, and with the help of her dupatta and a bed-sheet she managed to get down through the window of the flat, cannot be believed. It is also pertinent to note that she has stated that she had tied the hotel bed-sheet with her dupatta for getting down. It is strange as to how hotel bed-sheet was with her in the flat. She was not in the hotel as she had left the hotel long back when, according to her, she had been abducted by Prakash and Puja, on 7.2.2003.

14.4 Thus, the story narrated by the victim that she was on the 3rd floor of the building cannot be believed. It is not that the victim has loosely said that she was possibly on the 3rd floor. She has specifically stated that when she thought of escaping from the flat, she saw through a sliding window and she knew that she was on the third floor and thereafter she executed her escape plan. It is also pertinent to note that in the Court once she stated that the window had no grill and then her case is that she tied the dupatta and bed-sheet to the window grill!

15. The victim told the medical officer (Exh. 18) that she gained her consciousness at 3 p.m. On 13.02.2003. If it is true, she must have made a plan to escape after 3 p.m. At 3 p.m., in a locality where several flats were facing each other, it cannot be

believed that she was not noticed by anyone getting down from the flat through the window, especially when she has stated that there was a small hut/room of the watchman on the ground. Upon getting down from the flat, she came across the policemen, who guided her to go to Sola High Court Police Station, where she gave a version, which was absolutely different than the one which she gave before the doctor. Thus, the story of the victim with regard to escaping from the so-called "3rd floor" of Anushruti Flats is not believable.

15.1 Now, let us look at the version with regard to her abduction from a place near Hotel Rest N Ride. Though she has given different versions with regard to the second hotel to which she went, we may believe that she was staying in Hotel Rest N Ride, though twice or thrice she has stated that she didn't know the name of the hotel to which she was taken. When she decided to leave the hotel for going to Delhi, according to her, she left the hotel and started walking without asking anybody as to in which direction the railway station was. This conduct of the victim appears to be absolutely abnormal. The story of a person, who wants to go to railway station, who does not know anything about the area or places of Ahmedabad and who does not ask anybody and walks in one particular direction, cannot be believed. She has specifically stated that she did not make any inquiry about the train going to Delhi at the reception counter of the hotel. A person of ordinary prudence would invariably inquire about the train timings and even if we ignore that fact, at least she would like

to know as to in which direction she had to walk to reach the railway station.

15.2 From Hotel Rest N Ride, according to the victim, she started walking and near Kachchhi Bhavan at Paldi, she was abducted by Prakash and Puja, who were sitting in a rickshaw and as Puja had put a handkerchief on her mouth, she could not raise any alarm or shout for help. This was her version as stated in the FIR.

15.3 The aforesaid story is also not believable. Kachchhi Bhavan, which is situated in Paldi, near Paldi Bus Terminus, is a thickly populated and congested area. In our opinion, it would be very difficult for someone to abduct a person from such an area without being noticed by anyone. Moreover, according to the victim, Puja tried to pull her into the rickshaw and put a handkerchief on the mouth of the victim so as to prevent the victim from shouting. One cannot believe this story because the victim was also a girl aged around 17-18 years and she must be strong enough to protest and it becomes difficult for a woman or a girl to pull someone into a rickshaw and looking to the size of a rickshaw, it is extremely difficult for anyone to pull someone forcibly into the rickshaw within a few seconds. Still, there is one more important factor, which is with regard to the direction where Kachchhi Bhavan is situated. We know it very well that for going to railway station from Hotel Rest N Ride, one has not to go towards Kachchhi Bhavan because it is situated exactly on the opposite direction and that too it is more than ½ km away from

Hotel Rest N Ride. Thus, the version of the victim that she was walking from Hotel Rest and Ride for going to the railway station and while going to the railway station, when she was near Kachchhi Bhavan, she was abducted, cannot be believed. The said story appears to be improbable.

16. The above facts clearly denote that if at all the victim was in a flat in Anushruti Tower, we believe that she went there at her free will and volition. Not only she went there at her free volition, she also must have stayed there for 3 days at her free volition. Otherwise, on the first day, being in wrongful confinement, she would have tried to escape in the same manner in which she is alleged to have escaped on the third day. She has given another version with regard to the person, who accompanied her and who was speaking with her at the place where she was wrongfully confined. In the FIR she did not state that another girl was also staying with her in the flat but in her cross examination she said that there was another girl with her in the flat but she was unable to give name of the girl with whom she was wrongfully confined in the said flat. This version also creates serious doubts about the correctness of different versions given by the victim. The contradictions made by her clearly go to show that the true story is different than the one which had been narrated by her either before the court or before the investigating agency.

16.1 It is also pertinent to note that before Dr.

Parul Ramesh Vaghela, PW No. 4 (Exh. 18), the victim stated that she was unconscious at the time of her abduction. For the first time she came to know that she had been brought to a room when she gained her consciousness. If this story is correct, she was unconscious throughout the period from which she was abducted till she was brought to Anushruti flat. To take out an unconscious girl aged about 17-18 years from a rickshaw and to take her to the second or third floor of the building is also a difficult task, which possibly Puja and Prakash could not have done without being noticed by some people around.

16.2 If we consider the circumstances and the time when the victim is alleged to have been raped, different versions given by the victim before different authorities create serious doubt about the truthfulness of her story. Once in her cross-examination, she has stated that she was offered 'papad' but before the medical officer in the unit of Dr. Leuva, she has stated that when she was offered wine she refused it and, therefore, she was tied up with the bed and two or three glasses of wine was poured in her mouth and thereafter she was raped one by one. If she was in fact unconscious at the time of rape, she would not have known whether she was raped by one person or two. If she was in fact tied to the bed, it is not known as to how she got herself released from the bed, as she has not said anything with regard to the manner in which she was tied or the way in which she made herself free. It is also pertinent to note that upon making panchnama of the

room, no rope or any other substance has been found with which she must have been tied with the bed. It is also pertinent to note from the panchnama of the room that neither any bottle of liquor nor any glass had been found. No reference to any bottle of liquor or glass has been made in the panchnama. Thus, there was neither any bottle of liquor nor any glass in the room wherein she was wrongfully confined. We reiterate here that if she had been tied to the bed, there would have been something with which the victim would have been tied to the bed, but there is no reference to any rope, string or any other material with which she could have been tied with the bed, when, according to the victim, two glasses of wine was poured in her mouth after being tied to the bed.

16.3 With regard to escaping from the flat also, she has given different versions. In her statement as well as in her cross-examination, she has stated that she gained consciousness by 3 p.m., whereas in her deposition before the Court she has stated that she got up in the morning and thereafter she escaped. If she had got up in the morning and had escaped in the morning, the question arises as to where she was for the whole day because around 5 p.m. she had met two policemen after coming out from Anushruti Tower and thereafter she had gone to Sola High Court Police Station. She must have reached Sola High Court Police Station around 6:00 p.m. as her version was recorded at Sola High Court Police Station at 8 p.m. on 12.02.2003. Here also, the contradictions made by her belie the statements made by her and makes her stories

incredible.

16.4 With regard to identification of Prakash and D.K., she stated that there was a photograph of D.K. in the room, wherein she was wrongfully confined. A photograph of D.K. on scooter was found from the place where she was wrongfully confined. In the panchnama there is a reference to a photograph on the basis of which the victim stated that the photograph was of D.K. We could not find the said photograph on the record as it has not been exhibited. In the circumstances, we called for the muddamal from the trial court and tried to find out whether the photograph was there and we find that though the photograph has been referred to in the panchnama, there was no photograph of D.K. in the record. There is still one another missing link. The victim referred to visiting cards of Rana. The said visiting cards have been referred to in the panchnama as well. Before the PSI, at Sola High Court Police Station, when the victim made a statement around 8 p.m. on 13.2.2003, she gave two visiting cards of Rana, who is alleged to have raped the victim. The victim has stated that when Rana had come to the flat, he had given his visiting cards to her. In the visiting cards, name of Rana was stated as 'G.S. Rana'. Those cards as well as card of Hotel Raj Palace were given by the victim to the PSI, Sola High Court Police Station. The said cards have not been exhibited and they are also not forming part of muddamal. We are quite surprised to note that a person, who visits a girl with an intention to rape her, would ever give

his visiting cards to the girl. Thus, the story told by the victim does not inspire any confidence in any version given by her either before the court or before the police in her FIR.

17. If one looks at the medical report regarding examination of the victim, there does not appear to be any evidence to connect the accused with the offence. First of all, let us express our annoyance to the fact that though a complaint with regard to rape had been reported on 13.2.2003 around 6 p.m. before the PSI, Sola High Court Police Station, the victim had not been sent for medical examination. It was the case of the victim that she had been raped on the previous night and the report with regard to the offence was made between 6 and 8 p.m. on the next day, that is, on 13.2.2003. In such a case, it was the duty of the concerned police officer to refer the victim immediately to the nearest government hospital for medical examination. As a matter of fact, upon knowing the fact that an offence of rape had been alleged to have been committed, the concerned police officer ought to have referred the victim to the medical officer of Sola Civil Hospital, which is hardly 200-300 mtrs. away from the Sola High Court Police Station. Instead of doing so, he recorded the statement and asked the victim to go to Ellisbridge Police Station, which is about 10 kms. away from Sola High Court Police Station.

17.1 At Ellisbridge Police Station her statement was recorded on 14.2.2003. As time has not been mentioned

in the FIR, it is possible that after midnight of 13.02.2003 her statement might have been recorded, but the victim was referred to the Civil Hospital only around 6.45 p.m. on 14.2.2003. Dr. Parul Ramesh Vaghela, PW No. 4 (Exh. 18) has stated in her chief that on 14.2.2003 at 6.45 p.m., the victim was examined by her when the victim was brought to her by a lady constable. As a matter of fact, when an alleged offence of rape is reported, it becomes the prime duty of the concerned police officer to refer the victim immediately to the nearest Government hospital for her medical examination. The delay caused at the instance of the police authorities in sending the victim for medical examination shows lethargic attitude of the police in the matter of investigation.

17.2 Evidence adduced by medical officer, Dr. Parul Ramesh Vaghela, PW No. 4 (Exh. 18) shows that no spermatozoa had been found from the vaginal swab. As per the report (Exh. 20) submitted by the Asst. Professor of the Dept. of Pathology, B.J. Medical College, Ahmedabad, no spermatozoa was found from the said swab. Though there is an evidence to the effect that hymen of the victim was torn a little, there is no evidence to show that the accused was the person(s), who had sexual intercourse with the victim. Blood group of the victim is 'B⁺ve', whereas blood group of the accused is 'O⁺ve'. From the blood stains found from the clothes of the victim, blood having O⁺ve group has not been traced as per the report submitted by the FSL (Exh. 48). Thus, there is no

evidence to connect the accused with the offence from the medical evidence available on record.

17.3 From the medical evidence adduced before the Sessions Court, it appears that a small bruise was found on the right breast of the victim. A suggestion was made to Medical Officer Dr. Parul Ramesh Vaghela, PW No.4 (Exh. 18) to the effect that the said bruise could have been self-inflicted. The said suggestion has been denied by the Doctor. However, the said bruise would not straightway implicate the accused in the offence of rape.

17.4 As stated hereinabove, medical evidence available against the accused is nil. Except bare statement of the victim that D.K. had committed rape after she had become unconscious, there is no other allegation against the accused. Of course, tear of hymen of the victim denotes that there could have been intercourse, but that alone is not sufficient to implicate the accused in the offence of rape, unless otherwise proved beyond reasonable doubt.

17.5 It is worth noting here that though blood, saliva, etc. were taken by the medical officer when the victim was examined on 13.2.2003, samples of blood, saliva, blood stains, etc. were not forwarded to FSL for considerably long period. Samples of blood, etc. were forwarded to FSL only when the learned Sessions Judge passed the order on 27th January, 2005. It is really astonishing as to why the samples of blood, saliva, etc. and clothes of the

victim had not been forwarded to the FSL earlier. This shows serious indifference and lethargy on the part of the investigating agency.

18. Learned APP Shri KT Dave has prayed for permission to adduce additional evidence and he has submitted that the victim be further examined for the purpose of identification of D.K. so as to establish that the photograph, which is not on record, which she had seen, was of D.K.

18.1 He has further submitted that even Investigating Officer J.J. Patel, PW No. 9 (Exh. 38) be also examined again before this court so that the photograph of D.K., which is not on record, can be placed on record so as to enable the victim to identify D.K. before this court.

19. In our opinion, at this stage further evidence cannot be permitted to be adduced so as to fill up the lacuna. What is more important is that the victim has already married as found from one of the adjournment applications and it would not be proper to call the victim again for further examination as it might result into disturbances in her married life. It is also pertinent to note that examining the victim as well as Investigating Officer J.J. Patel, PW No. 9 (Exh. 38) would be of no use in view of the fact that photograph of D.K. is neither on record nor it is there even in muddamal. If photograph of D.K. is not even in the muddamal, that is, it has not been seized at any point of time, it would not be proper and in

the interest of justice to permit additional evidence to be adduced at this stage so as to fill up the lacuna. In the circumstances, the oral request made by the learned APP for adducing further evidence is rejected.

20. We have heard learned advocate Shri Rajesh K. Shah appearing for accused-Prakash Ramjibhai Marwadi (Sessions Case No. 4/2005), the appellant in Criminal Appeal No. 2149 of 2005 and learned advocate Shri Yogesh Lakhani appearing for learned advocate Shri Ashish Dagli for accused Ramesh @ Vinod @ D.K. Rodji @ Chaudhry @ Patel Shankarji @ Rajubhai Chaudhry-Patel (Sessions Case No. 78/2005), appellant in Criminal Appeal No. 2455 of 2005.

21. Learned advocate Shri Lakhani appearing for the accused in Criminal Appeal No. 2455 of 2005 has submitted that the story narrated by the victim is thoroughly inconsistent and contradictory to such an extent that it would be very dangerous to punish anyone on the basis of the statements made by the victim, which are different all the time. According to him, none of her versions inspires any confidence.

21.1 Elaborating the aforesaid submission, he has submitted that the victim has given different versions at different points of time. It has been submitted by him that the victim was not clear as to why or as to how she came to Ahmedabad because, once she has stated that she had to appear at an interview for the post of typist and that is why she had come to Ahmedabad. At

some other time, she has stated that because of some mistake, instead of going to Jammu, she boarded a train going to Ahmedabad and she landed in Ahmedabad. He has submitted that it cannot be believed that a person, who has studied at least up to 9th standard, would not know Hindi or English. She must be having sufficient knowledge of Hindi or English so as to read name of the station at least on the platform and journey from Delhi to Ahmedabad is not a small journey and she has stated that she did not talk to anyone in the compartment! This appears to be quite doubtful. He has, therefore, submitted that on the basis of such inconsistent and incoherent story, it would not be proper to convict any person.

21.2 Learned advocate Shri Lakhani has further submitted that if one looks at the contradictions made by the victim in different versions of her story, one can surely find that she was telling blatant lies. The first version, which the victim had given before the PSI, Sola High Court Police Station, appears to be quite doubtful. She has contradicted her own version given before the said police officer in her cross-examination and before the medical officer, when she was sent for medical examination.

21.3 Looking to the contradictory versions given by the victim, according to the learned advocates, the victim is quite unreliable and, therefore, no order of conviction could have been passed on the basis of her versions and, therefore, the order of conviction deserves to be set aside.

22. We have heard the learned advocates and have carefully gone through the evidence on record as well as the impugned judgment. Upon considering the arguments advanced by the learned advocates, which have been discussed herein below, we are not in a position to uphold the order of conviction because we find that the case against the accused has not been established by the prosecution beyond reasonable doubt for the reasons, which have been stated hereinafter. Though the learned APP has tried his best to convince us to the effect that the impugned judgment gives sufficient reasons for conviction of the appellants, we do not agree with him because of glaring contradictions appearing in the statements/versions of the victim before the police authorities, in her deposition before the Court and before the Medical Officers and also in view of inadequate medical evidence.

23. Apart from the fact that she has given different versions or reasons for coming to Ahmedabad or how she landed up in Ahmedabad, there does not appear to be an element of truth in the version given by her at different times. It is difficult to believe her story and therefore we are in agreement with the submissions made by the learned advocates appearing for the appellants in each appeal that the story given by the victim does not inspire any confidence so as to convict the appellants on the basis of evidence available on record.

24. We have also found that certain important witnesses have not been examined by the prosecution. It is not known whether step-brother of the victim Yogendra had in fact asked his friend Suresh to accompany the victim to Ahmedabad as neither Suresh nor Yogendra had been examined by the prosecution. No inquiry has been made as to who was the girl, if any, who was with the victim, when the victim had been wrongfully confined in Anushruti Flats. Of course, it is doubtful whether she was in fact wrongfully confined at all. It cannot be believed that if the victim was in wrongful confinement for three days and there was another girl with her in the flat she did not know even name of the girl.

25. We accept the submission of the learned advocates appearing for the appellants that at least watchman of Anushruti Tower should have been examined so as to know whether any person in an unconscious state had been brought to that building on 7.2.2003, whether anybody had made an effort to get down from the flat by tying a dupatta and bed-sheet with grill of the window. In normal circumstances, somebody would have seen such act if in fact around 3 p.m. on any day in a residential locality someone tries to get out through the window with the help of dupatta and bed-sheet. No effort has been made by the investigating agency to find out whether anybody had seen the victim getting down with the help of a dupatta and bed-sheet and running away from the area.

26. The learned advocates for the appellants also

appear to be absolutely right when they submitted that it cannot be believed that the victim did not raise any alarm during the four days when she was in in building Anushruti flat especially when there were sliding windows in the room in which she had been wrongfully confined and the windowpanes were also in broken condition. The victim certainly had a chance to shout for help and attract attention of neighbours or passers by. One cannot believe that a person who has been wrongfully confined in such a state would not make any effort to get help or to escape. We further feel that if the victim could manage to escape on the fourth day, why didn't she do the same thing on the first day if in fact she had been abducted and wrongfully confined in Anushruti Flats.

27. We also find that no test identification parade had been conducted so as to find out whether the accused in Sessions Case No. 78/05, or someone else had committed the offence. The reason which the prosecution has given is that the said accused was identified from the photograph, which was found from the room where the victim had been detained. The said photograph is not on record and as stated herein above, even from the muddamal we could not find the said photograph. This also creates a doubt whether, in fact, the accused in Sessions Case No. 78 of 2005, namely, Ramesh@Vinod@D.K. was in fact involved in the offence.

28. Once again it may be stated that the story narrated by the victim before two different medical

officers, which has been recorded once in Hindi and once in English, are contradictory to each other. Even if we try to reconcile so as to believe that the victim might have made some mistakes, the reconciled story narrated to two medical officers is absolutely contradictory to the facts stated in the FIR before the police authority and in her further statement in the course of investigation. Looking to the contradictions and incoherence which are apparent in her statements, they do not inspire any confidence and therefore they cannot be believed. In the circumstances, it cannot be said that the prosecution has proved its case beyond reasonable doubt.

29. What is more important is that there is no evidence to connect the appellant-accused Appellant in Criminal Appeal No. 2455 of 2005 to the offence alleged to have been committed by him. The vaginal swab taken from the victim does not denote presence of any spermatozoa, blood groups of the said accused and victim are different and blood of only victim has been found from the clothes worn by the victim. Except for the contradictory statements made by the victim, there is nothing to connect the said accused to the offence and to hold that the said accused is guilty of the offence of rape alleged against him.

30. The reports given by the FSL (Exh. 48) gives a clean chit to accused Ramesh @ Vinod @ D.K. Rodji @ Chaudhry @ Patel Shankarji @ Rajubhai Chaudhry-Patel, who is the appellant-accused in Criminal Appeal No. 2455 of 2005.

31. If we look at some other facts, the prosecution has not stated anywhere as to where the victim was on the night of 13.2.2003. On 13.2.2003 at 8 p.m. from Sola High Court Police Station she had been asked to go to Ellisbridge Police Station, where she must have reported after 8 p.m. and part of her statements must have been recorded at that time. At Ellisbridge Police Station, her statements have been recorded on 14.2.2003, but time has not been recorded, so it can be at any time after midnight of 13.2.2003. On 14.2.2003 at 6.45 p.m. the victim was presented before the medical officer. The question is as to where the victim was during the night between 13th and 14th February, 2003. There is no explanation with regard thereto. This fact shows that the prosecution has not cared to gather sufficient information and/or activities of the victim during the period after the alleged offence had been committed.

32. It has also been submitted that there was gross delay in medical examination of the victim. The said delay could have been either deliberate or as a result of the lethargic approach of the prosecution. On 13.2.2003 around 6 p.m., the victim reported commission of the alleged offence of abduction and rape at Sola High Court Police Station. Her statement had been recorded by the police officer in that police station, which was forwarded to Ellisbridge Police Station as the PSI of Sola High Court believed that the victim was abducted at Paldi (which was the first offence), which was within the jurisdiction of

Ellisbridge Police Station and as the first offence was committed within the jurisdiction of Ellisbridge Police Station, he thought it fit to forward her statement to the said police station and nothing was done to send the victim for medical examination immediately, though, in fact, the Civil Hospital at Sola is hardly 200 to 300 mtrs. away from Sola High Court Police Station. Even the police officer of Ellisbridge Police Station, where the victim must have been taken around 9 p.m. on 13.2.2003 did not bother to send the victim for medical examination till 6.45 p.m. on 14.2.2003. This delay is quite fatal to the case of prosecution as nothing is known about the place where she was on that night though she was a victim of an alleged rape and she was not medically examined before that night and she was examined only on the next day and that too at 6.45 p.m.

33. The learned advocates have also submitted that there are serious discrepancies with regard to the place where the victim had been allegedly wrongfully confined and whether it was the first, second or third floor of building Anushruti Flats is not sure. It is difficult to believe that a girl of 17 or 18 years can get down through the window from the third floor of a building with the help of a duppata and bed-sheet whose length altogether would in any case not exceed 4 mtrs. To get down from 3rd floor of a building in an unnatural way is not an easy task. A person having such a courage could not have been abducted in a rickshaw by Puja and Prakash from a very congested locality of the city and could not have been detained

at a place for 3 days against her will. All these facts and circumstances force us to disbelieve the story of the victim. One more thing is required to be said here. Though the victim stated before the Court on oath that there was no grill in the window, she has stated that the dupatta and the bed-sheet had been tied with the window grill so as to escape from the flat with help of the dupatta and the bed-sheet.

34. There is another important discrepancy with regard to the time when the victim gained consciousness in Anushruti Flat after she was made to consume liquor. Before Dr. Parul Waghela P.W. No. 4, (Exh. 18), in the unit of Dr. Lauva and in the FIR she has stated that she gained consciousness at 3 p.m. whereas she has stated before the Court on oath that she gained consciousness and got up in the morning. These are the contradictions which are vital to the case the victim has tried to put up. If in fact she gained consciousness in the morning, the question would be as to what she had done up to 5 p.m. on that day because she had approached Sola High Court Police Station around 6 p.m. The above fact also denotes that possibly she was in Anushruti Flat or elsewhere and she had not been locked up as alleged by her. The aforesaid submissions made by the learned advocates appearing for the appellants raise very serious doubts, which the learned APP, in spite of his best efforts, could not clear.

35. The reason for which the victim had come to Ahmedabad is still a suspense. Not for a moment we say

that if she had come here for some work, the alleged incident should have taken place. Not the least. Simply because the victim cannot give a reason for which she had come to Ahmedabad and gone to different hotels would not mean that she has no right to remain safe in this city. We firmly believe that even if some variance is found in the versions given by the victim, undue benefit of such variance should not be given to the accused. But, unfortunately, here we find glaring contradictions to such an extent that the version given by her before different authorities cannot be believed. The story which she has narrated at different points of time to different persons/authorities cannot be synchronized and lack of medical evidence linking the accused with the crimes does not permit us to hold the accused guilty of the offences charged against them.

36. The story with regard to abduction also cannot be believed. If we say in a nutshell, she has been alleged to have been abducted from a place where she would not have gone at all because from the hotel she wanted to go to railway station and the place from where she is alleged to have been abducted is absolutely in the opposite direction. The area from where she is alleged to have been abducted is a thickly populated area near an important bus terminus with plenty of passengers and pedestrians moving around at all the time. If she was made unconscious in a rickshaw, she could not have been lifted from the rickshaw to the place where she was alleged to have been taken and detained. Anushruti Tower is a 10-

storeyed building as found from the record. To take someone in an unconscious state from a rickshaw to a 10-storeyed building and not being watched or noticed by anyone is simply unbelievable. Further, if the victim could escape on the fourth day, why didn't she make any attempt to escape on the first day itself is also a question which requires to be pondered over. It has been pointed out that she was provided food throughout her detention. We do not know how the food was being provided to her. If she was strong enough to get down from 3rd floor of a multi-storeyed building, why didn't she not shout for help for 3 days of her captivity and even at the time when she was allegedly being abducted or being raped so as to raise an alarm and get help from people around. All the above circumstances raise serious suspicion about the stories of the victim and that would compel us to give benefit of doubt to the accused more particularly in view of absence of any solid medical evidence against the accused.

37. For the aforesaid reasons, we are not in agreement with the reasons recorded by the learned Addl. Sessions Judge, Ahmedabad City, while convicting the accused of the charges levelled against them. In the circumstances, the impugned judgment and order of conviction requires to be quashed and set aside.

38. In the result, the appeals are allowed. The impugned common judgment and order of conviction passed by the learned Addl. Sessions Judge, Court No. 7, Ahmedabad City, in Sessions Case No. 4 of 2005 and

Sessions Case No. 78 of 2005 dated 28th September, 2005 is quashed and set aside. The accused Prakash Ramjibhai Marwadi (Sessions Case No. 4/2005) and Ramesh @ Vinod @ D.K. Rodji @ Chaudhry @ Patel Shankarji @ Rajubhai Chaudhry-Patel (Sessions Case No. 78/2005) are acquitted of the offences charged against them and they are ordered to be set at liberty forthwith, if they are not required in connection with any other criminal case. It has been stated by the learned APP that the fine has not been paid by the appellants-accused so far, but if paid, the said amount shall be refunded to them.

39. Muddamal had been called for so as to find out whether photograph of D.K. was forming part of the muddamal. The said photograph could not be found from the muddamal. The Registry shall return the muddamal and the Record and Proceedings to the Sessions Court.

(Anil R. Dave, J.)

(K.S. Jhaveri, J.)

(hn)